Larry E. Prince, ISB # 1759 Jeffrey T. Drake, ISB # 5872 HOLLAND & HART LLP Suite 1400, U. S. Bank Plaza 101 South Capitol Blvd. Post Office Box 2527 Boise, Idaho 83701 Telephone: (208) 342-5000

64628

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF IDAHO

In re:) Case No. 97-02754
PAUL REES HARWARD and JANET LOUISE HARWARD, dba HARWARD HOMES, Debtors.	MOTION FOR STAY RELIEF MOTION FOR STAY RELIEF

COMES NOW FIRST SECURITY BANK OF IDAHO, N.A. ("First Security"), and, pursuant to 11 U.S.C. § 362 and LBR 4001.2, moves the Court to remove the automatic stay existing by virtue of § 362 Title 11 U.S.C. on the below-described property so as to permit First Security to foreclose its lien upon the same.

The subject property is described as follows:

Deposit Account 0008-999-2749975 issued by First Security in the amount of \$15,000.

(the "CD").

First Security respectfully represents the following in support of this Motion:

1. Paul R. Harward, (the "Debtor") filed a Chapter 7 petition with the Court on September 8, 1997 (the "Petition Date"). The Trustee is the duly qualified and acting trustee of

the Debtor's Chapter 7 estate.

- 2. First Security is the holder of a secured claim against the Debtor and is a party in interest in this case.
- 3. On or about June 19, 1997 the Debtor executed an Application, Agreement, and Note for Stand-By Documentary Credit (the "Note") wherein the Debtor applied to First Security for the issuance of an irrevocable letter of credit in the amount of \$15,000. A true and correct copy of the Note is attached hereto as Exhibit A and, by this reference, incorporated herein as if set forth in full.
- 4. On or about June 26, 1997 the Debtor executed an Assignment of Deposit Account (the "Security Agreement") wherein the Debtor granted First Security a security interest in the CD to secure the indebtedness evidenced by the Note. A true and correct copy of the Security Agreement is attached hereto as Exhibit B and, by this reference, incorporated herein as if set forth in full.
- 5. On or about June 27, 1997 First Security issued an Irrevocable Standby Letter of Credit No. S-0029945-9001 in the amount of \$15,000 and expiring on July 24, 1999 (the "Letter of Credit") for the benefit of Residential Warranty Corporation ("RWC"). A true and correct copy of the Letter of Credit is attached hereto as Exhibit C and, by this reference, incorporated herein as if set forth in full.
- 6. On or about June 25, 1999, RWC requested payment of the Letter of Credit and presented a sight draft in the amount of \$15,000 (the "Sight Draft"). A true and correct copy of RWC's written request for payment is attached hereto as Exhibit D and, by this reference, incorporated herein as if set forth in full. A true and correct copy of RWC's Sight Draft is attached hereto as Exhibit E and, by this reference, incorporated herein as if set forth in full.
- 7. On or about July 12, 1999, First Security honored the Sight Draft by Check No. 210084320, payable to RWC in the amount of \$15,000 (the "Check"). A true and correct

copy of the Check is attached hereto as Exhibit F and, by this reference, incorporated herein as if set forth in full.

8. First Security has perfected its security interest in the CD by its possession thereof at all times relevant hereto.

9. First Security is entitled to relief from the stay under 11 U.S.C. § 362(d)(2) for the reason that the Debtor has defaulted under the Note and Security Agreement by failing to pay the principal amount of the Letter of Credit and by the filing of this Bankruptcy proceeding. In addition, the stay is not necessary to an effective reorganization in that this is a Chapter 7 proceeding. Further, First Security has not been provided with adequate protection for its security interest in the CD.

WHEREFORE, First Security prays for relief as follows:

1. That the stay be annulled pursuant to Title 11 U.S.C. § 362(d) so as to permit First Security to foreclose its security interest in the CD in accordance with the Application, the Security Agreement, and applicable state law; and

2. That the Court grant First Security such other and further relief as is just and proper.

Dated this 14th day of July, 1999.

HOLLAND & HART LLP

Jeffrey T. Drake, for the firm

Attorneys for First Security Bank of Idaho, N.A.

CERTIFICATE OF MAILING

I hereby certify that on this 14th day of July, 1999, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

John H. Krommenhoek

By facsimile followed by U.S. Mail

Trustee

5019 Emerald

P.O. Box 8358

Boise, Idaho 83707

Facsimile: 375-5477

W. Jed Manwaring Evans Keane LLP

1101 W. River Street, Suite 200

Boise, ID 83702 Facsimile: 345-3514

D. Blair Clark

Ringert Clark Chartered

P.O. Box 2773

455 S. 3rd

Boise, ID 83701 Facsimile: 342-4657

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U.S. Trustee 304 N. 8th Street, Suite 347

P.O. Box 110

Boise, ID 83701 Facsimile: 334-9756 By facsimile followed by U.S. Mail

By facsimile followed by U.S. Mail

By facsimile followed by U.S. Mail

HOLLAND & HART LLP

Jeffrey T. Drake, of the firm

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EXHIBIT

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4. DUTY OF ISSUER.	
APPLICANT WAIVES APPLICANT'S RIGHT TO CAUSE FIX SUANT TO THE LETTER OF CREDIT. Applicant understands to be, on their face, in compliance with the terms and condition sufficiency, accuracy, correctness, genuineness, or authority is Security (notwithsterding notlication by Applicant of the exister it acts in accordance with the terms of the exister.	NOENTS SHALL BE IN ANY WAY RESPONSIBLE FOR PERFORMANCE BY JUDING ANY CLAIM OF APPLICANT TO THE EFFECT THAT THE TRANSACTIVE FRAUD, FORGERY OR OTHER DEFECT. TO the extent permitted by applicable RST SECURITY TO BE ENJOINED FROM HONORING DRAFTS PRESENTED Is and agrees that First Security shall have no liability or responsibility for the sold of credit. First Security shall have no liability or responsibility for the of any person againg. Islatification, or legal effect of any documents presented to any person againg. Islatification, or legal effect of any documents presented to do any person againg. Islatification, or legal effect of any documents presented to day person againg. Islatification, or legal effect of any documents are sentent of any latent or apparent defect) and first Security shall be held harmless insol into acknowledges that any attempt by Applicant to cause first Security to be enjoined did may be opposed by first Security, THE EXPENSE OF WHICH PROCEEDING SH
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tour and drawings.	8y:
	Title:
This Application, Agreement and Note shall be decreed to be	be accepted by First Security and shall become effective upon the (1) execution of t
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Dated 19 5	FIRST SECURITY BANK OF IQAHO, N.A.
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on Nauga Main No 008	Title: St. St. Commercial Commercial Customer No. Officer No.
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ASSIGNMENT OF DEPOSIT ACCOUNT

SERVICE STATE OF STAT to the last THE STREET References in the shaded area are for Lander's use only and do not limit the applicability of this document to any particular loan or Item

Borrower: PAUL R. HARWARD

1546 E. FAIRVIEV MERIDIAN ID 83642 Lender: First Security Bank, N.A.

NAMPA

103 12TH AVENUE SOUTH

NAMPA, ID 83651

Grantor:

PAUL R. HARWARD and PHYLLIS HARWARD

MERIDIAN, ID 83642

THIS ASSIGNMENT OF DEPOSIT ACCOUNT is entered into among PAUL R. HARWARD (referred to below as "Borrower"); PAUL R. HARWARD and PHYLLIS HARWARD (referred to below as "Grantor"); and First Security Bank, N.A. (referred to below at "Lender").

ASSIGNMENT. For valuable consideration, Grantor assigns and grants to Lender a socurity interest in the Collateral, including without limitation the deposit occounts described below, to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

DEFINITIONS. The following words shall have the following meanings when used in this Agreement. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lewful money of the United States of America.

Account. The word "Account" means the deposit account deserbed below in the definition for "Collateral."

Agreement. The word "Agreement" means this Assignment of Deposit Account, as this Assignment of Deposit Account may be amende or modified from time to time, together with all exhibits and schedules attached to this Assignment of Deposit Account from time to time.

Borrower. The word "Borrower" means each and every person or entity signing the Note, including without limitation PAUL R. HARWARD.

Coffateral. The word "Collateral" means the following described deposit account:

008-999-2749975 issued by Lender in an amount not less than \$15,000,00

together with (a) all interest, whether now accrued or hereafter accruing: (b) all additional deposits hereafter made to the Account; (c) any and all proceeds from the Account: and (d) all renewals, replacements and substitutions for any of the foregoing.

Event of Default. The words "Event of Default" mean and include without limitation any of the Events of Default set forth below in the section Wiled "Events of Default.

Grantor. The word "Grantor" means PAUL R, HARWARD and PHYLLIS HARWARD. Any Grantor who signs this Agreement, but does not sign the Note, is signing this Agreement only to grant a security interest in Grantor's interest in the Collaboral to Lander and is not personally liable under the Note except as otherwise provided by personal or law (e.g., personal liability under a gueranty or as a surety).

Quarantor. The word "Guarantor" means and includes without limitation each and all of the guarantors, sureties, and accommodation parties in connection with the Indebtedness.

indebiedness. The word "Indebtedness" means the indebtedness evidenced by the Note, including all principal and interest, together with all other indebtedness and excess and exponses for which Grantor or Borrower is responsible under this Agreement or under env of the Releted Documents. In addition, the word "Indebtedness" includes all other obligations, debts and Kabilitios, plus interest thereon, of Borrawer, or any one or more of them, to Lender, as well as all claims by Lander against Borrawer, or any one or more of them, whether oxisting now or later; whether they are voluntary or involuntary, due or not due, direct or indirect, obsolute or comingent, liquidated or unliquidated; whether Borrower may be fable individually or jointly with others; whether Borrower may be obligated as guarantor, surety, accommodation party or otherwise; whether recovery upon such indebtedness may be or hereafter may become barred by any statute of limitations; and whether such indebtedness may become otherwise unenforceable,

Lender. The word "Lender" means First Security Bank, N.A., its successors and assigns.

Note. The word "Note" means the note or credit agreement dated June 26, 1987, in the principal amount of \$15,000.00 from Borrower to Londer, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for the note or credit agreement.

Related Documents. The words "Related Documents" mean and include without limitation all promissory notes, credit agreements, lean agreements, anvironmental agreements, guaramits, security agreements, mortgages, deeds of trust, and all other instruments, agreements and documents, whether now or hereafter axisting, executed in connection with the Indebtedness.

BORROWER'S WAIVERS AND RESPONSIBILITIES. Except as otherwise required under this Agroament or by applicable law, (a) Borrower agrees that Lender need not tell Borrower about any action or inaction Lender takes in connection with this Agraement. Ibl Borrower assumes the responsibility fer being and keeping informed about the Collateral and (e) Borrower waives any defenses that may arise because of any action or inaction of Lander, including without limitation any failure of Lender to realize upon the Collateral or any delay by Lender in realizing upon the Collateral and Borrower agrees to remain liable under the Note no matter what action Lender takes or fails to take under this

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that: (a) this Agreement is executed at Borrower's request and not at the request of Lander; (b) Grantor has the full right, power and authority to enter into this Agreement and to pledge the Collisteral to Lender; (c) Grantor has established adequate means of obtaining from Borrower on a continuing besis information about Borrower's financial condition; and (d) Lender has made no representation to Grantor about Borrower or Borrower's creditworthingss.

GRANTOR'S WAIVERS. Granter waives all requirements of presentment, protest, demand, and notice of dishonor or non-payment to Grantor. Sorrower, or any other party to the indebtedness or the Collateral. Lender may do any of the following with respect to any obligation of any Borrower, without first obtaining the consent of Grantor: (a) grant any extension of time for any payment. (b) grant any renewal, (c) permit any modification of payment terms or other terms, or (d) exchange or release any Collateral or other security. No such act or failure to act shall affect Lender's rights against Grantor or the Collateral.

GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL. WITH PESPECT TO the Collateral, Granton represents and warrants to Lender that:

Ownership. Grantor is the lawful owner of the Collatoral free and clear of all loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

Right to Grant Security Interest. Grantor has the full right, power, and authority to enter into this Agreement and to assign the Collateral to

No Further Transfer. Grantor will not self, ossign, encumber, or otherwise dispose of any of Grantor's rights in the Colleteral except as provided in this Agreement.

No Defaults. There are no defaults relating to the Collateral, and there are no olfsets or counterclaims to the same. Grantor will strictly and promotly do everything required of Grantor under the terms, conditions, promises, and agreements contained in or relating to the

ands. Any and all replacement or renewal cardificates, incorporate, or other benefits or proceeds related to the Collateral that are used by Grantor shall be held by Gramor in trust for Landar and immediately shall be delivered by Grantor to Landar to be held as part of the Collateral,

LENDER'S RIGHTS AND OBLIGATIONS WITH RESPECT TO THE COLLATERAL. While this Agreement is in effect. Lander may retain the rights to possession of the Collateral, together with any and all evidence of the Collateral, such as ceroficates or passbooks. This Agreement will remain in effect until (a) there no longer is any indebtedness owing to Lender; (b) all other obligations secured by this Agreement have been fulfilled; and (c) Grantor, in writing, has requested from Londer a release of this Agreement. **EXHIBIT**

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TO 9-12284662594

ASSIGNMENT OF DEPOSIT ACCOUNT (Continued)

Page 2

2.04/08

EXPENDITURES BY LENDER. If not discharged or paid when due, Lendor may four shell not be obligated toll discharge or pay any amounts required to be discharged or paid by Grantor under this Agreement, including without limitation all taxes, liens, security interests, anounted noisy chains, at any time lavied or packed on the Collateral. Lendor also may but shell not be obligated toll pay all costs for insuring, and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then been interest at the rate the Indebtodness and, at Lendor's option, will (a) be psychic on demand. (b) be added to the balance of the Note and be apportuned among and be payable with any installment payments to become due during either (i) he term of any applicable incurrance policy or (ii) the remaining term of the Note, or (c) be tweeted as a balance payment which will be due and payable at the Note's maturity. This Agreement also will see will so ourment of these amounts. Such right shall be in addition to all other rights and remedies to which Lendor may be enabled upon the occurrance payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be anatied upon the occurrance

LIMITATIONS ON OBLIGATIONS OF LENDER. Lender shall use ordinary reasonable care in the physical preservation and outsidy of any certificate or pacebook for the Collateral but shall have no other obligation to protect the Collateral or its value. In particular, but without finitation, Lender shall have no responsibility. (a) for the obligation or protection of any income on the Collateral, (b) for the preservation of rights against sisters of the Collateral or against third persons; (c) for sacertaining any maturities, conversions, exchanges, offers, tenders, or similar matters relating to the Collateral on (d) for informing the Granter about any of the above, whether or not Lender has or is deemed to

EVENTS OF DEFAULT. Each of the following shall constitute on Event of Default under this Agraement:

Default on Indebtedness. Failure of Borrower to make any payment when due on the Indebtedn

Other Defaults. Failure of Grantor or Borrower to camply with or to perform any other term, obligation, covenant or condition command in this Agreement or in any of the Related Documents or failure of Borrower to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lunder and Borrower.

Default in Favor of Third Pardes. Should Borrower or any Grantor default under any lean, extendion of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's or any Grantor's ability to repay the Leans or perform their respective obligations under this Agreement or any of the Related

False Statements. Any warranty, representation or statement made or furnished to Lender by or on behalf of Grantor or Borrower under this Agreement, the Note or the Related Documents is false or misleading in any material respect, either now or at the time made or

Defective Collaboralization. This Agreement or say of the Related Documents season to be in full force and effect (including failure of any collateral documents to create a valid and perfected security interest or lien) at any time and for any reason.

Deech or Insolvency. The death of Grantor or Borrower or the dissolution or termination of Grantor or Borrower's existence as a going business, the insolvency of Grantor or Borrower, the appointment of a receiver for any part of Grantor or Borrower's property, any passignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor or Borrower.

Creditor or Forhibure Precedings. Commencement of foreclosure or forhibure proceedings, whether by judicial proceeding, sett-help, repossession of any other newhed, by any creditor of Grantor or Borrower or by any governmental agency against the Collateral or any other collateral accuring the indebtedness. This includes a garnishment of any of Grantor or Borrower's deposit accounts with Lender. However, this Event of Default shall not apply if there is a good faith disputs by Grantor or Borrower as to the validity or reasonableness of the claims which is the basic of the challeng for foreigner proceeding and if Grantor or Borrower gives Lender written notice of the creditor or foreigner or foreigne forfeiture proceeding and deposits with Lender manks of a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate receive or bond for the dispute.

events Affecting Guerentor. Any of the precading events occurs with respect to any Guarantor of any of the indebtedness or such Guarantor dies or becomes incompetent.

Adverse Change. A material severse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

insecurity. Lander, in good faith, deems itself insecure.

Right to Cure. If any default, other than a Default on indebtedness, is curable and if Grantor or Borrower has not been given a prior notice of a breach of the came provision of this Agreement, it may be cured land no Event of Default will have occurred) if Grantor or Borrower, er a present of the came provision of this Agretment, it may be cured take no event of Detault will have occurred) if Grantor or Borrower, after Londer Sends within twenty (20) days; or (5), if the cure requires more than Eventy (20) days; immediately initiates steps which Lender deams in Londer's sole discretion to be sufficient to cure the default and thereafter continues and completed all reasonable and necessary steps sufficient to produce compliance as seen as reasonable.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default, or at any time thereafter. Lender may exercise a more of the following rights and remedies, in addition to any rights or remedies that may be available at law, in equity, or otherwise:

see. Lander may declare all indebtedness of Borrower to Lender immediately due and payable, without notice of any kind to Grantor or Barrower

Application of Account Proceeds. Lender may obtain all funds in the Account from the leasuer of the Account and apply them to the indeptedness in the same manner as if the Account had been issued by Lender. If the Account is subject to an early withdrawal penalty, Indeptedness in the same manner as if the Account had been issued by Lender. If the Account is subject to an early withdrawal penalty, that penalty shall be deducted from the Account before its especiation to the indeptedness, whether the Account is with Lender or agree other institution. Any excess funds remaining after application of the Account proceeds to the Indeptedness will be paid to Gramor or Sorrower as the interests of Grantor or Borrower may appear. Borrower agree, to the extent permitted by law, to pay any deficiency after uniform Commercial Code, even if the Account to the Indeptedness. Lender also shall have all the rights of a secured party under the Idaho Uniform Commercial Code, even if the Account is not otherwise subject to such Code concerning security interests, and the parties to this Agreement agree that the provisions of the Code giving rights to a secured party shall nevertheless be a part of this Agreement.

Other Rights and Remedies. Lender shall have and may exercise any or all of the rights and remedies of a secured oraditor under the provisions of the Idaho Uniform Commercial Code, at law, in equity, or otherwise.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the indebtedness due to Landar after application of all amounts received from the exercise of the rights provided in the section.

Cumulative Remedies. All of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not execute pursuit of any other remedy, and an election to make excendingly or to take action to perform an obligation of Granter or Borrower under this Agreement, after Granter or Borrower's failure to perform, shall not affect Lender's right to declare a default and to exercise its remedies.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a port of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be affective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Applicable Law. This Agreement has been delivered to Lender and accepted by Lender in the State of Idaho. If there is a lawsuit, Granter and Borrower agree upon Lender's request to submit to the jurisdiction of the courts of CANYON County, State of Idaho. This Agreement shell be governed by and construct in accordance with the laws of the State of Idaho.

Attorneys' Feet: Expenses, Grantor and Borrower agree to pay upon demand all of Lender's costs and expenses, including reasonable attorneys' rees: Expenses, Grander and Borrower agree to pay upon demand as or Lender's costs and expenses, including reasonable statements' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may pay sameone cise to help enforce this Agreement, and Grander and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not there is a lawful, including reasonable attorneys' fees and legal expenses whether or not there is a lawful, including reasonable attorneys' and and legal expenses for bankruptcy proceedings (and including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grander and Borrower area shall pay all court costs and such additional fees as may

Multiple Parties. All obligations of Granter and Borrower under this Agreement shall be joint and several, and all references to Borrower shall mean each and every Borrower, and all references to Granter shall mean each and every Granter. This means that each of the persons signing below is responsible for all obligations in this Agreement.

Notices. All notices required to be given under this Agreement shall be given in writing, may be cent by telefacsimile, and chall be effective

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P. 05/08

06-26-1997

ASSIGNMENT OF DEPOSIT ACCOUNT

(Continued)

when estually delivered or when deposited with a nationally recognized overnight counier or deposited in the United Status mail, first class, poetage prepaid, addressed to the party to whom the notice is to be given at the address shown above. Any party may change its address for notice under this Agreement by giving forms! written notice to the other pervise, specifying that the purpose of the notice is to change the party is address. To the extent permitted by applicable law, if there is more than one distinct on Borrower, notice to any Gramer or Berrower will constitute notice to all Gramor and Borrowers. For notice purposes, Granter and Borrower will keep Lender informed at all

rer of Attorney. Grantor hereby appoints Lender as its true and lewful attornsy-in-fact, irrevecably, with full power of substitution to do Power of Attorney. Grantor hereby appoints Lender as its true and lawful attorney-in-fact, irrevecably, with full power of substitution to do the following: (a) to demand, collect, receipt for, sue and recover all sums of money or other property which may now or hereafter become due, owing or payable from the Colleteral; (b) to execute, sign and enderso any and all claims, instruments, receipts, check, drafts or warrants assued in payment for the Collaboral; (c) to settle or compressite any and all claims arising under the Collaboral, check, the place and stead of Grantor, to execute and defiver fits release and settlement for the claim; and (d) to file any claim or claims or to take any action or instruct or raise part in any proceedings, either in its own name or in the name of Grantor, or otherwise, which in the discretion of Lender may seem to be necessary or advisable. This power is given as security for the indeptedness, and the authority hereby conferred is and shall be irrevecable and shall remain in full force and effect until renounced by Lender.

Severability. If a court of competers jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or Severalisty. If a court or competent junishment may any prevision at the engineering to be already or content of the country prevision invested or unenforceable as to any other persons or circumstances. If feasible, any such orienting provision shall be deemed to be medified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid ar

Successor Imerests. Subject to the limitations set forth above on transfer of the Collegezal, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

Waiver. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or offission on the part of Lander in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not provision a waiver of such right of a provision of this Agreement shall not provision of waiver by Lender of a provision of this Agreement shall not such a waiver of Lender, nor any other provision of this Agreement. No prior values by Lender, nor any course of dealing between Lander and Gramory, shall constant a waiver of any afficiency rights or on or of Gramory, shall constant of Lender it required under this Agreement. The granting of such consent of Lender it required under this Agreement, the granting of such consent by Lender in any instance shall not constitute confining onsent to subsequent instances where such consent is required and in all cases such concent may be granted or withheld in the sole discretion of Lender.

BORROWER AND EACH GRANTOR ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS ASSIGNMENT OF DEPOSIT ACCOUNT AND AGREE TO ITS TERMS. THIS AGREEMENT IS DATED JUNE 26, 1997.

CHROWER:

AUL R. HARWA

RANTOR:

Walter Street, Transaction

USER MICH, Reg. U.S. Pat. & T.M. (91., 101.) 12.3 IC 1227 CFI PROSANTIA, NC. All rights reserved, I/D-660 83924 S.L.M. C20.0V.U.

First Security Bank.

IRREVOCABLE STANDBY LETTER OF CREDIT NO. 5-0029945-9001

ISSUED IN Boise, Idaho on 27 JUN 1997

BENEFICIARY:

JAN ANN

RESIDENTIAL WARRANTY CORPORATION

5300 DERRY STREET

HARRISBURG, PA 17111-3598

PAUL R. HARWARD 1546 E. FAIRVIEW

MERIDIAN, ID 83642

AMOUNT: USD ***15,000.00

FIFTEEN THOUSAND AND 00/100 UNITED

STATES DOLLARS

DATE AND PLACE OF EXPIRY:

24 JUL 1999 Our counters.

APPLICANT:

CREDIT AVAILABLE WITH: First Security Bank, N.A. International Department 999 Main, 3rd Floor Boise, Idaho 83702

BY: PAYMENT

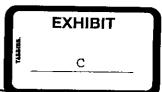
AVAILABLE BY DRAFTS AT SIGHT DRAWN ON: First Security Bank, N.A. Boise, Idaho

GENTLEMEN:

WE HEREBY ISSUE THIS LETTER OF CREDIT IN YOUR FAVOR AVAILABLE BY YOUR DRAFT(S) DRAWN ON FIRST SECURITY BANK, N.A. BEARING THE CLAUSE: DRAWN UNDER FIRST SECURITY BANK, N.A. LETTER OF CREDIT NO. S-0029945-9001 ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

BENEFICIARY'S SIGNED STATEMENT CERTIFYING THAT "PAUL R. HARWARD HAS:

- A. FAILED TO PROPERLY ENROLL A HOME, AS REQUIRED BY ITS AGREEMENT WITH RESIDENTIAL WARRANTY CORPORATION, WHICH RESULTED IN LOSS OR EXPENSES FOR RESIDENTIAL WARRANTY CORPORATION OR THE INSURER, AND
- B. FAILED TO PERFORM ITS WARRANTY OBLIGATION AS SET FORTH IN THE RESIDENTIAL WARRANTY CORPORATION PROGRAM, AS REQUIRED BY ITS AGREEMENT WITH RESIDENTIAL WARRANTY CORPORATION, WHICH RESULTED IN LOSS OR EXPENSES FOR RESIDENTIAL WARRANTY CORPORATION OR THE INSURER, AND



L/C #: S-0029945-9001

PAGE

- C. FAILED TO COOPERATE IN THE DISPUTE SETTLEMENT PROCESS OR TO COMPLY WITH THE RESULTS OF THAT PROCESS, AS REQUIRED BY ITS AGREEMENT WITH RESIDENTIAL WARRANTY CORPORATION, WHICH RESULTED IN LOSS OR EXPENSES FOR RESIDENTIAL WARRANTY CORPORATION OR THE INSURER, AND
- D. BUILDER HAS FAILED TO RENEW OR TO PROVIDE PROOF OF RENEWAL OF LETTER OF CREDIT AS REQUIRED BY THE AGREEMENT REGARDING SUBMISSION OF LETTER OF CREDIT, AND
- E. OTHERWISE BREACHED ITS AGREEMENT WITH RESIDENTIAL WARRANTY CORPORATION WHICH RESULTED IN LOSS OR EXPENSES FOR RESIDENTIAL WARRANTY CORPORATION OR THE INSURER. "

WE HEREBY AGREE WITH THE DRAWERS, ENDORSERS AND BONA FIDE HOLDERS OF ALL DRAFTS UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT, THAT SUCH DRAFTS WILL BE DULY HONORED UPON PRESENTATION TO THE DRAWEE.

REIMBURSEMENT INSTRUCTIONS: PAYMENT TO BE EFFECTED PER YOUR INSTRUCTIONS AGAINST CONFORMING DOCUMENTS PRESENTED AT OUR COUNTERS.

This letter of credit is subject to Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce Publication No. 500.

JANIO# J/KYCE DPERATIONS OFFICER

INTERNATIONAL DEPARTMENT



RESIDENTIAL WARRANTY CORPORATION

5300 Derry Street Harrisburg, PA 17111-3598

717-561-4480 FAX 717-561-4494

June 25, 1999

First Security Bank, N.A. Janice J. Kyle International Department 999 Main, 3rd Floor Boise, ID 83702

RE: Request for payment of

Letter of Credit No. S-0029945-9001(15,000.00)

Paul R. Harward

Dear Ms. Kyle:

As the Fiscal Administrator for Residential Warranty Corporation, I am writing to request payment under the above referenced Letter of Credit.

The reason for this request is due to the Account Party's failure to comply with the following paragraph of the amendment to the above-mentioned Letter of Credit. The paragraph states that the Beneficiary (Residential Warranty Corporation) may draw upon the Letter of Credit if "Builder has failed to renew or to provide proof of renewal of Letter of Credit as required by the Agreement Regarding Submission of Letter of Credit." Your records should reflect the fact that Paul R. Harward, (Builder) has not renewed the above-mentioned Letter of Credit.

Enclosed you will find the original Letter of Credit and the Beneficiary's Signed Statement. Should you have any questions, please contact me directly at extension 2200.

Sincerely,

RESIDENTIAL WARRANTY CORPORATION

Ann M. Cooper

Fiscal Administrator

Warranty Resolution Department

Enclosures

UPS Standard Overnight

EXHIBIT

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D

poration 1.0
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